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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,280	01/04/2002	Jay A. Murdock	LEAR 0960 R	6835

34007 7590 10/03/2003

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EXAMINER

PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,280

Applicant(s)

MURDOCK ET AL.

Examiner

Dennis H. Pedder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003 and 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19, 20, 23-29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3 and 4 is/are allowed.
- 6) ☒ Claim(s) 2, 5-17, 19, 20, 23-29 and 31 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12. 6) ☐ Other:

DETAILED ACTION

Reissue Applications

I. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,010,174 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Oath/Declaration

1. The declaration submitted 2/24/2003, viewed in light of the petition decision of 5/29/2003 is deemed to overcome the rejection of 10/17/2002.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 10-11, 20, 28 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 contains the same vague expression "vertical" as rejected in the prior office action.

Claim 11 is written backwards. The ridge 104 extends from the wall 96, not the reverse.

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Claim 10 is vague in reciting the term “adapted”, a function implying unrecited structure or means. How are the legs adapted?

Claim 20 lacks clear antecedent for “a guide”, the guide apparently having been recited on line 4 of claim 16.

Claim 28 continues to be incorrect as no elbow contact apparently occurs.

The claims should be thoroughly checked for these types of problems, deemed the responsibility of applicant.

RECAPTURE

4. Claims 5-17, 19-20, 23-29, 31 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

In view of the recent court decisions in Pannu v. Storz Instruments Inc. 258 F.3d 1366, 59 USPQ 2d1597 (Fed. cir. 2001) and Patent Examining Guidance to be inserted into MPEP 1400, the claims of record are deemed to be an improper recapture of broadened claimed

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subject matter surrendered in the application for patent upon which the present reissue is based. Specifically: Claims 3 and 4 are merely amended to correct formal problems raised by the reissue examiner. However, each of the independent claims of the patent incorporated claim 1 into each of claims 2, 3, and 4. Therefore applicant has *canceled* the subject matter of claim 1 by his amendatory actions. Each of the independent claims 5,16,29,31 of this reissue application broaden the subject matter of claim 1 of the patent by leaving out claimed details of that claim. As an example, but not a complete listing, claim 1 stated that the guide was fixed to one surface of the torque control, that the visor body had a longitudinally extending bore receiving a rod of a rod assembly, and that the track defined a substantially enclosed longitudinally extending passage adjacent one surface of the visor body. All of these limitations are missing in the above independent claims and as a result, the claims improperly broaden the claims of the patent and recapture exists improperly in this application. "A claim of a reissue application enlarges the scope of the claims of the patent if it is broader in at least one respect, even though it may be narrower in other respects"(MPEP 1412.03).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 5-7, 13, 14-16, 19-20, 23-24, 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark.

As to claim 5, Clark has rod 30, torque control 54/56 with pivotal attachment at both left and right ends in figure 6 in guide 58/60 with legs 58, visor body 22 with structure 94 partially circumscribing the rod and a pivotal attachment where the rod enters the rib 94, attachments 58 are slidably engaged to the rod, and track 72, 74 cooperating with legs 58 at apertures 59 allowing relative sliding longitudinal movement.

As to claim 16, the pivotal attachments are coaxial and the control maintains a rotation position with respect to the rod, track visor body and the visor body pivotal attachment.

As to claim the tracks 72, 74 are fixed to members 80, in turn fixed to the visor body.

As to claims 13-14, see the contact in figure 5 as compared to figure 4.

As to claim 20, the guide 58/60 is U-shaped.

As to claim 23, the tracks 72, 74 project in longitudinal direction along the visor body.

As to claim 24, the outer circumference of the tracks 72, 74 is a free edge.

As to claim 28, as best understood, the visor body is by contacting the guide.

As to claims 15, 27, 29, the second pivotal attachment of the visor body projects for the body along its upper surface.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claim 25 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Clark.

Process steps are not given patentable weight in a product claim (MPEP 2113). Further such assembly is obvious given the structure of Clark.

Allowable Subject Matter

9. Claims 1, 3, 4 are allowed.
10. Claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed June 30, 2003 have been fully considered but they are not persuasive.

Please see the detailed action above.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

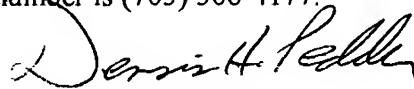
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (703) 308-2178. The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.


Dennis H. Pedder
Primary Examiner
Art Unit 3612

9/29/03

DHP